

**REMARKS**

Claims 1-4, 7, 8 and 10-45 are pending. Claim 1 is amended.

Claim 1 was objected to due to an informality. The Examiner suggests that claim 1 use the same Markush language format as cancelled claim 5. Accordingly, claim 1 has been amended as suggested by the Examiner.

Claims 1-4, 7, 8, 10-32, 39 and 40 were rejected under 35 USC §103(a) as being unpatentable over Altieri. This rejection is respectfully traversed.

The Examiner notes that the abstract of Altieri states an expanded modified flour product preferably having at least 40% by weight amylose content and containing about 2% or more by weight of an inorganic water soluble salt. The Examiner further states that nowhere does Altieri expressly require that the amylose content must be greater than 45 wt%.

Quite to the contrary, Altieri does expressly state in its disclosure that the amylose content must be greater than 45 wt%. For example, see column 3, lines 47-53 stating that “in accordance with this invention, a biodegradable, low density, low cost shaped product is obtained by expanding a high amylose starch material, having at least 45% by weight of amylose content.” Further, column 4, lines 4-8 states that the “starting starch material useful in this invention must be a high amylose starch, i.e., one containing at least 45% by weight of amylose” (emphasis added).

The Examiner also comments that the amylose content being greater than 45 wt% is not recited in any of the claims in Altieri. Such is irrelevant. In making an obviousness determination, the Examiner must consider what the teachings of Altieri as a whole would have taught one of ordinary skill in the art.

Lastly, the Examiner argues that if less than 45 wt% amylose is the point of novelty, this limitation is absent from the claims of the invention.

Claim 1 recites, as noted by the Examiner, "said destructured or complexed starch is a natural starch from one of potato, wheat, maize and tapioca starch." The teaching of Altieri would not have motivated one of ordinary skill in the art to employ one of these destructured or complexed starches.

As noted above, and noted repeatedly in the prior responses, Altieri teaches use of a high amylose starch. More specifically, one containing at least 45% by weight of amylose set forth in the specification, or at least 40% by weight amylose content set forth in the abstract. Altieri teaches that suitable high amylose starches useful in its invention are any starches with an amylose content of at least 45% and preferably at least 65% by weight (column 4, lines 27-29). Altieri continues to state that while high amylose corn starch has been especially suitable, other starches which are useful include those derived from any plant species which produce or can be made to produce a high amylose content starch, e.g., corn, peas, barley and rice (column 4, lines 29-34). Nowhere does Altieri teach that potato, wheat, maize or tapioca starch would provide a suitable starch for its invention.

In addition, one of ordinary skill in the art would not have been motivated to employ a natural starch from one of potato, wheat, maize and tapioca starch since Altieri teaches away from these starches. One of ordinary skill in the art would realize that such starches have an amylose content much below that which Altieri teaches as being preferred. As shown in Starch Chemistry and Technology (pages 250-253) which has been made record and considered by the Examiner, these specific starches have amylose contents well below the 45% by weight taught in the description of Altieri and even well below the 40% by weight set forth in the abstract of Altieri. The Examiner has failed to raise a prima facie rejection of the claims, and has failed to provide any reason why one of ordinary skill in the art would have been motivated to employ one of the specific claimed starches in place of the high amylose starches taught by Altieri.

At the bottom of page 3 of the Office Action, the Examiner comments that although Altieri is silent about the intrinsic viscosity of the starch in DMSO, Altieri teaches essentially the same subject matter. This is incorrect for the reasons discussed above. The Examiner argues that such an intrinsic viscosity would have been anticipated or obvious optimization. However, the Examiner fails to explain why such would have been anticipated or considered an obvious optimization in view of the different starches used in the present invention and those enumerated by Altieri.

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The Examiner also notes that where the claimed and prior art products are shown to be identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. While this is a true statement of the law, the Examiner has not shown or explained why Altieri could be considered identical when Altieri teaches entirely different starches than those claimed.


For at least the foregoing reasons, the claimed invention distinguishes over the cited art and defines patentable subject matter. Favorable reconsideration is earnestly solicited.

Should the Examiner deem that any further action by applicants would be desirable to place the application in condition for allowance, the Examiner is encouraged to telephone applicants' undersigned attorney.

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If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,  
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Attachment: Petition for Extension of Time